



**CALIFORNIA
HIGH-SPEED RAIL
AUTHORITY**

UPDATE: MAY 4, 2011 EXECUTIVE/ADMINISTRATIVE COMMITTEE MEETING
AGENDA ITEM #7

TO: Chairman Pringle and Executive/Administrative Committee Members

FROM: Roelof van Ark, CEO

Date: May 4, 2011

RE: SB/DVBE/DBE policy

SUMMARY

During its February Board meeting, Authority staff provided an initial briefing and proposed a DRAFT policy regarding the Authority's procurement practices and outreach efforts related to Small Business (SB), Disabled Veteran Business Enterprise (DVBE), and Disadvantaged (Minority-owned and Women-owned) Business Enterprise (DBE) program participation. This information item will provide the Executive/Administrative Committee with an update on the SB/DVBE/DBE policy and program in development for the Authority. It is anticipated that a final policy and program will go before the Board this summer.

BACKGROUND

As a State agency, the Authority follows the SB/DVBE guidelines developed through the Department of General Services: 25% SB and 3% DVBE participation goals in all contracts. When contracting with the State, SB/DVBE businesses need to be certified with DGS to apply for that status in their contract bids. When proposals for bids are received by the Authority, there is an SB and DVBE incentive – SBs receive a 5% difference from the lowest bid; then DVBEs receive an additional 5%.

With regard to DBEs, the Authority Board has expressed a desire to develop a DBE program. However, the State of California is race and gender neutral, without specific requirements nor incentives for Minority Business Enterprises (MBE) or Women-Owned Enterprises (WBE). In fact, per Proposition 209 (Nov.1996) and the court ruling of *Monterey Mechanical Co. vs. Wilson* (1997), the California Minority and Women Business Enterprise Participation Program requirements of PCC § 10115, et seq., were found unconstitutional, thereby eliminating affirmative action within the state procurement process.

The Authority receives Federal funding, which for most agencies creates a federal requirement to develop a DBE program. However, the Authority receives its Federal funding from the Federal Railroad Administration (FRA). Until recently, the FRA has never functioned as a funding entity and, as such, does not have a mandate in place that calls for grantees to have a DBE program. Today, this means that DBE guidelines for the Authority refer back to California law. However, recently the Department of Transportation (DOT) has issued a Final Rule on Disadvantaged Business Enterprise Program Improvements. In response to concerns calling for the DOT to add DBE coverage for FRA grants, the DOT provided the following response:

There is not currently a direct, specific statutory mandate for a DBE program in FRA financial assistance programs, though the Department is considering ways of ensuring nondiscrimination in contracting in these programs. For example, like all recipients of Federal financial assistance, FRA recipients are subject to requirements under Title VI of the Civil Rights Act of 1964. Existing programs such as the

FHWA supportive services program and various initiatives by the Department's Office of Small and Disadvantaged Business Utilization, are in place to assist DBEs in being competitive.

– FR/Vol.76, No.19/p5095

The Authority is currently consulting with several partners, including the FRA Office of Civil Rights, DGS, our counsel within the Attorney General, Caltrans, and the Authority's SB/DVBE/DBE procurement consultant, to determine the Authority's legal requirement to develop a DBE component; and if the requirement is in place, to develop a DBE program that would likely function as a model to be implemented/replicated nationally by the FRA. Once there is more clarity on this issue, staff will bring a final proposed SB/DVBE/DBE policy and program to the Board. In the meantime, the Authority will continue to comply with existing law and aggressively implement diverse SB/DVBE outreach efforts.

CURRENT PROGRAM IMPLEMENTATION

The Authority is aggressively working to engage diverse SB/DVBE participation at several levels, including the development of the Authority's procurement materials, as well as through outreach.

Most notably, the Authority has developed partnerships with several agencies, including DGS, Caltrans, Department of Commerce's Minority Business Development Agency, Governor's Office of Economic Development, and California Small Business Advocate's Advisory Committee. These relationships are providing guidance in further refining of the Authority's Board policy, program development, and outreach efforts.

CASE STUDY: The Request for Expressions of Interest (RFEI) included a very robust SB/DVBE outreach component. In addition to circulating the RFEI document through the SB networks, staff worked with our partners to conduct a conference call with SB/DVBE/DBE organizations, such as minority chambers and small business groups. The organizations were empowered to push the information out to their participating members, totaling >55,000 contacts.

As a result of that conference call, the Authority identified the need to establish a streamlined one-page response option for SB participation in the RFEI process. That adjustment on the Authority's part was met with very positive feedback and participation by the SB community.

The SB/DVBE/DBE network also worked with the Authority to publicize the April 12 Industry Forum, which included a Meet-the-Primes element that attracted about 600 participants. The Authority also requested that DGS provide on-site information about certification, which was also lauded by the SB community.

SB/DVBE/DBE Consultant

The Authority's program management team in the process of contracting with an SB/DVBE/DBE consultant to ensure the team has the specific expertise necessary to ensure optimized SB/DVBE/DBE opportunities as we begin the RFQ and RFP process. The consultant's services include assisting in the development of the Small Business requirements to be stated in the Design-Build contracts, to develop the reporting requirements for the contractors and the reporting mechanisms to comply with federal and state requirements, provide advice with regard to the state and federal requirements applicable to the Small Business Plan, and assistance with procurement planning to achieve the mandates of the Client's Small Business Policy. It specifically excludes outreach which will be addressed by the Authority directly at a later date.

ATTACHMENT

- ✓ Department of Transportation: Federal Register /Vol. 76, No. 19
- ✓ HSRA Small Business/Disabled Veteran Business Enterprise policy (DRAFT)